

October 29, 1996

**COMPLAINT 1996 - NO. 7**  
**Newsletter contents**

**REASONABLE CAUSE DETERMINATION -- ORDER OF DISMISSAL**

**I. Nature of the Complaint**

The complainant alleges that Representative Conway violated RCW 42.52.180 by using language in a legislative mailing that assists his own reelection and that of other similar candidates.

**II. Procedural History**

Complaint 1996 - No. 7 was received on June 26, 1996. The complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleges a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report and the Board deliberated on the complaint at its regular meeting on October 10, 1996.

**III. Determination of Allegations of Fact**

The complaint in this case focuses on a document entitled 1996 Legislative Review-- which Representative Conway directed be prepared and mailed to his constituents after the conclusion of the 1996 legislative session. The document was produced and mailed using state staff time and resources.

On the first page of the document, Representative Conway addresses the reader in a letter to his constituents. The letter discusses the just-completed legislative session. The last three paragraphs of the letter read as follows:

These failures reflect the political extremism of Olympia these days. Our leaders seem more interested in making political statements rather than passing public policy, We talk the talk -- family wage jobs,-- property-tax reform,-- juvenile justice reform,-- but we don't walk the talk.

Both juvenile sentencing reform and welfare reform were achievable. There was over 80 percent agreement on most issues. But the Republican leadership was

more concerned in making a political statement about punishment– and family caps– rather than passing the legislation upon which there was bipartisan agreement.

Such extremism is inexcusable as well as troubling. The voters send us to Olympia to solve problems, not merely develop political agendas. Hopefully, in November, we will return to common sense.

The document continued with three pages of review of legislation introduced or enacted during the session. Among the statements describing legislation, the following two statements appeared:

It is shameful that corporations would oppose this meaningful tax break, as they will benefit to the tune of \$174 million from a total \$175 million in tax breaks during the next 15 months. It is my intention to work next session for this legislation.

. . .

I supported HB 2854 to bring about accountability in our tax incentive programs. Although it did not come up for a vote this year, I will work again next year to put its provisions into law.

Representative Conway either wrote or approved the inclusion of all of the material in the newsletter, including each of the above statements.

#### **IV. Determination of Allegations of Ethics Law Violations**

##### **A. Relevant Statutes**

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portions of RCW 42.52.180 provide as follows:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

. . .

(c) Activities that are part of the normal and regular conduct of the office or agency; . . .

In addition to the above restrictions as to the use of public facilities for campaign purposes, RCW 42.17.132 places certain restrictions on mailings by incumbent legislators during most of the last year of their term of office. A violation of this statute would also be a violation of RCW 42.52.180. RCW 42.17.132 provides as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

The legislator may mail one mailing no later than thirty days after the start of a regular legislative session and one mailing no later than sixty days after the end of a regular legislative session of identical newsletters to constituents.

The legislator may mail an individual letter to an individual constituent who (1) has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; or (2) holds a governmental office with jurisdiction over the subject matter of the letter.

A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings, including but not limited to production costs, printing costs, and postage.

## **B. Analysis**

### **1. Mailing Restrictions**

The mailing restrictions found at RCW 42.17.132 prohibit legislators from mailing a "letter, newsletter, brochure, or other piece of literature" to constituents, except under the limited circumstances set forth therein. Two newsletters are allowed during the twelve-month period imposed by the statute, but only at particular times. If the mailing in question is a newsletter, and if it was mailed within the time frame allowed by the statute, then there is no violation of RCW 42.17.132.

The term "newsletter" is not defined in the statute. Therefore, the ordinary meaning of the term should apply. "Newsletter" is defined in Webster's New World Dictionary, College Edition, as a "report issued by a firm, governmental agency, etc. to keep employees or the public informed of pertinent matters." The mailing in question consists of a report to constituents on the just concluded legislative session, a summary of bills introduced or enacted during the session, and several references to issues expected to be considered in the 1997 session. The Board, therefore, finds that it was a newsletter for purposes of RCW 42.17.132.

The Board also finds that, because the newsletter was mailed within 60 days of the end of the legislative session, it satisfied the timing requirement of RCW 42.17.132.

## **2. Content of Statements**

The statements in the newsletter which gave rise to the complaint fall into three categories: (1) a statement expressing hope that the member's party will be in power after the November election and that Republican leadership will avoid political extremism; (2) statements that presume that the legislator will return to office in the next legislative session, thus presuming his reelection; and (3) statements of a partisan nature.

We do not find a violation of RCW 42.52.180 in any of these statements. For purposes of the third category, statements of a partisan nature, we concluded as follows in Complaint 1995 -- No. 3:

The board finds that it is normal and regular conduct of the office of a state legislator for members of the House of Representatives to report to constituents the positions they intend to take on issues they will be addressing in the legislative session. The members of the legislature are elected on a partisan basis. It is acceptable for them to express their positions on issues that they will be dealing with in the legislative session in partisan terms. In that manner, their constituents are kept informed of how they are being represented in the legislature.

That reasoning is also applicable to post-session newsletters such as the one at issue here.

With respect to the first two categories, the language could be read as an indirect appeal for campaign support, which would be prohibited. However, given the ambiguous nature of some of the statements, and the minor impact such comments have on the entire document, the Board finds that, overall, the document is consistent with the statutory requirements of a newsletter.

The Board's sole jurisdictional authority is to review matters according to the State Ethics Act. We have no authority to enforce the policies and procedures of either house of the Legislature, except rules adopted pursuant to the State Ethics act. The House and Senate are free to adopt and enforce policies more restrictive than those found in the Act. We determine whether the State Ethics Act has been violated and, in this case, it has not.

## **V. Conclusion and Order**

Based on a review of the complaint and the Board's investigation, the Board determines that there is not reasonable cause to believe that Representative Conway committed a violation of RCW 42.52.180. The complaint is, therefore, dismissed.

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William Asbury, Chair  
by Will Bachofner, Vice-Chair